

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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| JOANNA GRAY, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Civil No. 1:18-cv-695-AJT-MSN |
| |) | |
| BRIAN T. MOYNIHAN, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |

REPORT & RECOMMENDATION

This matter comes before the Court on Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* (Dkt. No. 2). In support of the Motion, Plaintiff filed an affidavit that indicates that Plaintiff is unable to pay the costs of these proceedings. Upon consideration of the Motion, the supporting affidavit, and Plaintiff’s Complaint (Dkt. No. 1), this Court will conditionally grant Plaintiff leave to proceed *in forma pauperis*. The undersigned Magistrate Judge recommends, however, dismissing Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

I. Background

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), this Court must “dismiss the case at any time if it “determines that . . . the action or appeal—(ii) fails to state a claim on which relief may be granted.” In order to state a claim on which relief may be granted, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

In this case, Plaintiff alleges a violation under 42 U.S.C. § 1983, but she does not claim that any specific constitutional or statutory right has been violated by state or local officials, *see*

Compl. at 4, and merely cites to 1 U.S.C. § 112, which refers to the compilation of the Statutes at Large that “contain all the laws and concurrent resolutions enacted during each regular session of Congress; all proclamations by the President in the numbered series issued since the date of the adjournment of the regular session of Congress next preceding; and also any amendments to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Archivist of the United States” In fact, her claims are against the Bank of America and a service processor, and she alleges they arose from events in the “Northern Virginia Circuit Court.” *See* Compl. at 5–6. The Court therefore finds that Plaintiff’s Complaint does not contain sufficient factual allegations under 42 U.S.C. § 1983.

Plaintiff also suggests that there is subject matter jurisdiction in this Court because “money or a negotiable instrument is involved[.]” *id.* at 6, but the case on which she relies—*Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943)—involves the United States government’s issuance of commercial paper. And, it was the federal government’s issuance of that commercial paper that prompted the Supreme Court to rely on federal, as opposed to local law, in resolving the dispute. *Id.* at 366. No such federal commercial paper is at issue here. Consequently, Plaintiff provides no basis for this Court to resolve her claims.

II. Recommendation

For the foregoing reasons, the undersigned GRANTS Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* (Dkt. No. 2) but recommends DISMISSING Plaintiff’s Complaint.

III. Notice

By means of the Court’s electronic filing system and by mailing a copy of this Report and Recommendation to Defendants at their address for service of process, the parties are notified as follows. Objections to this Report and Recommendation must be filed within fourteen (14) days

of service on you of this Report and Recommendation. Failure to file timely objections to this Report and Recommendation waives appellate review of the substance of this Report and Recommendation and waives appellate review of a judgment based on this Report and Recommendation.

/s/

Michael S. Nachmanoff
United States Magistrate Judge

July 19, 2018
Alexandria, Virginia